

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

JIMMIE C. BIRMINGHAM,

Plaintiff,

v.

A. COURTNEY COX,
United States Attorney,

Defendant.

Case No. 09-cv-271-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on its own initiative for purposes of case management. Specifically, the Court has received a certificate of death for Plaintiff Jimmie C. Birmingham from the Pope County Clerk's Office.

From what the Court can discern of the Petition for Investigation (Doc. 1), which also acts as the operative complaint, Birmingham brings this case for violation of his civil rights pursuant to 42 U.S.C. § 1983. First, Birmingham alleges that Illinois Secretary of State Jesse White violated his due process rights by way of the Illinois mandatory insurance statute, 625 ILL. COMP. STAT. 5/7-601. Birmingham further alleges that White unlawfully disclosed his motor vehicle record to ChoicePoint Services, Inc., which in turn provided such information to Birmingham's prospective insurers. Birmingham contends that this was done in violation of the Illinois statute governing access to recorded personal information, namely 215 ILL. COMP. STAT. 5/1009.

The Court is of the understanding that the aforementioned claims do not survive Birmingham's death. *See Brazier v. Cherry*, 293 F.2d 401 (5th Cir. 1961) (whether § 1983

action survives plaintiff's death will depend on state law in relation to survival of actions); 755 ILL. COMP. STAT. ANN. 5/27-6 (West 2010). This, in conjunction with the fact that Birmingham never effectuated service of process against Defendant A. Courtney Cox, necessitates dismissal of this action.

Accordingly, the Court **DISMISSES** this case **without prejudice**, **DENIES as moot** the pending motions (Docs. 2, 3), and **DIRECTS** the Clerk of Court to enter judgment accordingly.

IT IS SO ORDERED.

DATED: March 22, 2010

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE